In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1348

JOHNNY RAY LITTLEPAGE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Texas, petitioner was convicted of having possessed goods worth more than $100, namely wigs, knowing them to have been stolen while moving in interstate commerce in violation of 18 U.S.C. 659. The court of appeals affirmed (Pet. App. A.).

Petitioner contends that incriminating admissions made to F.B.I. agents who interviewed him at his home should have been excluded because the warnings given him under *Miranda* v. *Arizona,* 384 U.S. 436, were defective and because the agents used trickery

in securing his acquiescence to the interview.[1] But, as the court below held, the record shows clearly not only that petitioner was not in custody during the interrogation, but that he was in any event given proper warnings.

Petitioner also argues here that an allegedly invalid search of his codefendant's automobile produced information about the crime which caused him to make admissions to the agents. Even assuming that the search was illegal and that a "but for" relationship existed between the fruits of the search and his decision to speak, as he maintains (Pet. 11–14), this Court and others have held that this degree of causation is insufficient to taint oral admisions which are the product of an intervening, voluntary decision. *Wong Sun* v. *United States,* 371 U.S. 471, 487–488, 491; see *Brown* v. *United States,* 375 F. 2d 310, 313–314 (C.A.D.C.), certiorari denied, 388 U.S. 915.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1971.

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[1] Petitioner's complaint with regard to trickery is that the agents allegedly advised him that they wanted to talk about another matter, relating to some television sets, and that only after several minutes of questioning about these did they begin asking questions about the stolen wigs. The court of appeals did not reach this contention, since it concluded that the questioning was not custodial and hence *Miranda* did not apply. The agents testified that they told petitioner that they wanted to speak to him "about a couple of matters" and that he did not ask specifically what those matters were before agreeing to talk and executing the waiver of rights form (Tr. 34, 39–41).

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